IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8972 OF 2004.

Bipin Sureshchandra Shah. ... Petitioner.

Versus.

State of Maharashtra and others. ... Respondents.

Shri R.G.Ketkar for the Petitioner.

Shri D.A.Patil, A.G.P. for the Respondents.

CORAM : ABHAY S.OKA, J.

DATED : 12th June, 2007.

P.C.:

1. Heard the learned Advocates appearing for the parties. The Petitioner preferred an Application under section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the said Act of 1996") praying for setting aside the arbitral Award dated 8th February 2001. The said application was filed in the Court of the Civil Judge, Senior Division, Pune. Prior to the said application, the Petitioner filed Miscellaneous Application No.324 of 2001 for the same relief in the District Court at Pune. The said Application was dismissed by order dated 4th May 2001 on the ground that the same was not maintainable. The Petitioner challenged the said order by filing a Writ Petition in this Court. Considering the definition of "Court" under the provisions of the said Act of 1996, this Court held that the proceedings before the District Court were without jurisdiction. This Court did not

interfere with the said order. However, the remedy of the Petitioner was kept open. Accordingly Miscellaneous Application No.190 of 2002 was filed by the Petitioner.

2. By order dated 10th June 2004 which is impugned in this petition, the learned 4th Joint Civil Judge, Senior Division, Pune held that the District Court was the proper Court to entertain the Application under section 34 of the said Act of 1996.

3. The issue of jurisdiction to entertain an Application under section 34 of the said Act of 1996 was referred to the Full Bench of this Court. By Judgment and order dated 12th April 2007, the Full Bench of this Court held that the principal civil Court for the purpose section 34 of the said Act of 1996 is the District Court and does not include any other Court inferior to the District Court. In view of this decision of the Full Bench, it is very difficult to find fault with the impugned order.

4. In the present case, the Petitioner had initially filed an Application under section 34 of the said Act of 1996 before the District Court. The said application was rejected on the ground that the District Court was not the proper forum. The said order has been confirmed by this Court and that is how the Petitioner

had approached the Court of the Civil Judge, Senior Division.

5. In a recent decision in the case of State of Goa v/s. Western Builders [(2006) 6 SCC 239] the Apex Court has taken a view that the provisions of section 14 of the Limitation Act will apply to the Application under section 34 of the said Act of 1996. There was a divergence pf opinion recorded by the learned Single Judges of this Court on this issue of the interpretation of the word "Court" and that is the reason why a reference was required to be made to the Full Bench. There cannot be a better case where section 14 of the Limitation Act 1963 can be applied. Considering the peculiar facts of the case, by maintaining the finding of the trial Court on the issue of jurisdiction, the operative part of the order will have to be modified by exercising power under sub-section (5) of section 24 of the Code of Civil Procedure, 1908 by transferring the Application to the District Court at Pune. This will avoid multiplicity of the proceedings.

6. Hence the following order is passed:

(i) The finding recorded by the learned trial Judge in the impugned order on the issue of jurisdiction is confirmed. However, the operative part of the impugned order

dated 10th June 2004 is modified and Miscellaneous Application No.190 of 2002 is hereby transferred to the District Court at Pune for hearing and final disposal.

(ii) The District Court will proceed to decide the Application on merits in accordance with law as expeditiously as possible and preferably on or before 31st December 2007.

(iii) To enable the Petitioner to apply for appropriate relief before the District Court, the ad-interim order passed by this Court on 16th June 2006 in Civil Application No.1510 of 2006 will continue to operate for a period of 8 weeks from today.

Judge.